

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

DATE: June 25, 1985

SUBJECT: Withdrawal of Orders, Index Nos. II-CERCLA-50102, and II-CERCLA-50107, in the matter of Duane Marine Site, as to 3 petitioners
Stph J. Luft
FROM: *Douglas R. Blazey*
Regional Counsel
for William J. Librizzi, Director
Emergency and Remedial
Response Division

TO: Christopher J. Daggett
Regional Administrator

339500



Attached for your review and approval is a Withdrawal of Orders, to be issued in connection with the Duane Marine site in Perth Amboy, New Jersey, affecting 3 petitioning parties. Of the 3 petitioners, 2 were among the original 35 respondents to the above-captioned Order No. II-CERCLA-50102, which you signed on December 4, 1984. The other was named, along with 21 others, as a respondent to the above-captioned Order No. II-CERCLA-50107, which you signed on March 22, 1985.

The original Order, No. 50102, was issued unilaterally for a CERCLA removal action. That Order named 35 respondents, among them 33 who were identified as responsible parties for the release of hazardous substances, pollutants, or contaminants to the environment from the Duane Marine facility, in their respective capacities as generator respondents. As generator respondents, the named parties were found to have arranged with the Duane Marine Salvage Corporation for Duane Marine's transport and ultimate disposal of wastes that included hazardous substances.

The third Order issued unilaterally in connection with this site, Order No. 50107, named 22 additional generator respondents. Together with the second Order naming 3 additional respondents, these Orders named a total of 60 respondents.

On January 23, 1985, you issued a document withdrawing Order No. 50102 as to 5 petitioning respondents. To date, therefore, 55 parties remain liable under the three Orders for the removal action at the Duane Marine site.

Certain of these 55 respondents have petitioned for withdrawal of Order No. 50102, and any subsequent amendments to that Order. Others have petitioned for withdrawal of Order No. 50107.

Through their respective counsel or through officers of their respective corporations, these petitioning parties have submitted information for EPA's consideration that supplements the information upon which EPA based its original decision to issue the Order to each of them.

After a careful review of the entire record, we have determined that we have insufficient evidence at this time to merit a conclusion that the 3 petitioning parties listed below are responsible parties under CERCLA for the environmental conditions to which EPA's December 4, 1984, Order and the subsequent Orders were addressed. Our determination is based upon our satisfaction with petitioners' demonstration of the following facts:

1. Midland Glass Company, now owned by Anchor Glass Container Corporation, was a respondent to Order No. 50102. Midland sent materials to the Duane Marine facility for disposal which can be categorized as (a) glass batch waste; (b) alkaline solvent, or degreasing medium ("B-110"); and (c) oils. EPA accepts Midland's characterization of its wastes as non-hazardous.

(a) Glass Batch Waste. The glass batch materials sent to the facility were not hazardous. None of the ingredients of glass is hazardous.

(b) B-110. The alkaline solvent, or degreasing medium, known by its trade name "B-110," was not hazardous. A solution of B-110 in water, together with oily wastes from machinery cleaned in tanks filled with the B-110 solution, was removed by Duane Marine from the Midland Glass plant and transported to the Duane Marine facility for disposal. None of the ingredients of B-110 is hazardous.

(c) Oils. Midland's oil wastes sent to Duane Marine consisted of four types of oils. These oils were No. 2 fuel oil; a machinery lubricant, or shear oil, trade name "Biosol L"; and two other machine lubricating oils, trade names "Regnis 210" and "Regnis 220." None of these oils is hazardous.

(i) No. 2 fuel oil. No. 2 fuel oil, containing no additives, is not a hazardous substance. Section 101(14) of CERCLA, 42 U.S.C. §9601(14), specifically exempts petroleum from classification as a hazardous substance. Duane Marine was called in by Midland Glass to clean up a spill of No. 2 fuel oil.

(ii) Biosol L. Biosol L is a biodegradable product made from animal fat (triglycerides). It is not a hazardous substance. Water is the only additive that was mixed with the Biosol L before its use, and so the mixture contained no hazardous substances.

(iii) Regnis 210 and 220. Both Regnis oils are petroleum based oils with additives. The petroleum is exempt from classification as a hazardous substance by Section 101(14) of CERCLA. The manufacturer of the Regnis oils has submitted documentation of the chemical nature of the additives under a confidentiality claim. EPA's technical staff have reviewed the confidential data and have determined that, to the extent of our knowledge at this time, the additives are not hazardous. Therefore, we regard the Regnis oils as non-hazardous under CERCLA.

2. Two Guys Department Stores, retail outlets owned by Vornado, Inc., arranged to have a mixture of spilled No. 4 fuel oil and creek water cleaned up and transported to the Duane Marine facility for disposal. (The Duane Marine Corporation operated as an oil spill cleanup facility in addition to its function as a hazardous waste disposal facility.) Neither No. 4 fuel oil nor creek water is a hazardous substance. Section 101(14) of CERCLA exempts petroleum from classification as a hazardous substance. Two Guys was named a respondent to Order No. 50102. No other materials were sent to Duane Marine by Two Guys, to our knowledge.

3. Emerson Quiet Kool Corporation ("Emerson Quiet Cool" in the caption to Order No. 50107) sent a mixture of water and two water inks to the Duane Marine facility for disposal. Information obtained from the ink manufacturer and supplied by the company lists the components of each of these inks. To the extent of our knowledge at this time, none of the components of the two water inks is a hazardous substance.

For the above particular reasons in each case respectively, and because we are at this time satisfied with the documentation presented by each petitioner of these facts, we have determined that none of these 3 parties was appropriately named as a respondent in the Duane Marine matter.

Accordingly, we recommend that our Orders of December 4, 1984, and March 22, 1985, and any and the supplemental Orders or memoranda be withdrawn as to the 3 respondents named in this memorandum.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
:
:
IN THE MATTER OF :
:
:
EMERSON QUIET KOOL :
CORPORATION, :
MIDLAND GLASS COMPANY, INC., :
and :
TWO GUYS DEPARTMENT STORES, :
Respondents. :
:
Proceeding Pursuant to §106 :
of the Comprehensive Environ- :
mental Response, Compensation, :
and Liability Act, 42 U.S.C. :
§9606 :
-----X

WITHDRAWAL OF ORDERS AS TO
CERTAIN RESPONDENTS

Index Nos. II-CERCLA-50102,
II-CERCLA-50107

FINDINGS

1. On December 4, 1984, an Administrative Order, Index No. II-CERCLA-50102 (hereinafter, "Order No. 50102"), was issued to the above-captioned Respondents Midland Glass Company, Inc., Two Guys Department Stores ("Two Guys"), and 34 other Respondents by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the President of the United States by §106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), delegated to the Administrator of the EPA by Executive

Order 12316, 46 Fed. Reg. 42237 (August 14, 1981), and re-delegated to the Regional Administrator, EPA Region II, on March 17, 1983. Under the terms of this Order, the Respondents were instructed to undertake certain immediate corrective actions at the Duane Marine Salvage Corporation facility in Perth Amboy, New Jersey, an abandoned hazardous waste disposal facility.

2. On December 18, 1984, EPA amended Order No. 50102 by letter memorandum.

3. On December 19, 1984, EPA issued an Administrative Order, Index No. II-CERCLA-50105, to three additional Respondents.

4. The two Orders mentioned in paragraphs 1 and 3 of this section were amended by letter memorandum dated January 16, 1985.

5. EPA withdrew its Orders with respect to five of the Respondents to Order No. 50102, on January 23, 1985.

6. On March 22, 1985, EPA issued a third Administrative Order, Index No. II-CERCLA-50107, in connection with the Duane Marine Salvage Corporation Site. This Order was issued to Respondent Emerson Quiet Kool Corporation ("Emerson Quiet Cool" in the caption) and to 21 other respondents.

7. On various dates subsequent to December 4, 1984, a number of Respondents (hereinafter, "the objecting Respondents") appeared in this proceeding by their respective counsel or through officers of their respective corporations and submitted information

to EPA that supplemented information already in the possession of the Agency which initially formed the basis for including such corporations as Respondents in the above-captioned proceedings. The objecting Respondents requested that the Orders of December 4, 1984, and any subsequent Orders issued in connection with the Duane Marine site, be withdrawn as to them because, for reasons adequately supported in documents submitted by each of the objecting Respondents to the EPA, they were not responsible parties for the release or threatened release of hazardous substances, pollutants, or contaminants to the environment from the Duane Marine facility.

8. Subsequently, between December 4, 1984, and June 21, 1985, communications were exchanged between counsel or representatives for the objecting Respondents and staff of the Office of Regional Counsel and the Emergency and Remedial Response Division, EPA Region II, in which the objecting Respondents set forth reasons why they believed the information in the possession of EPA, as supplemented by additional information or explanations provided by the objecting Respondents, failed to establish that they were potentially responsible parties under CERCLA for the environmental conditions to which EPA's Orders were addressed.

9. The documents submitted by the objecting Respondents have been evaluated by EPA's Office of Regional Counsel and by the Emergency and Remedial Response Division, which have recommended that the proceeding initially commenced by EPA

should be withdrawn as to certain of the objecting Repondents.

WHEREFORE, on the basis of a consideration of the entire record of this proceeding, the above-captioned Order and the Supplemental Order of December 18, 1984, are hereby WITHDRAWN with respect to the following Respondents:

1. Emerson Quiet Kool Corporation
2. Midland Glass Company, Inc.
3. Two Guys Department Stores

Effective this 28TH day of June, 1985.


CHRISTOPHER J. DAGGETT
REGIONAL ADMINISTRATOR

JUNE 28, 1985
DATE

U.S. Environmental Protection Agency
Region II